



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

12

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/055,849	01/14/2002	Nicholas P. Van Brunt	7175-74108	8532

7590

02/11/2004

Ronald S Henderson Esq
BARNES & THORNBURG
11 South Meridian Street
Indianapolis, IN 46204

EXAMINER

DEMILLE, DANTON D

ART UNIT	PAPER NUMBER
----------	--------------

3764

DATE MAILED: 02/11/2004

12

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/055,849

Applicant(s)

VAN BRUNT ET AL.

Examiner

Danton DeMille

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 January 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 and 14-119 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-12, 14-77 and 90 is/are allowed.
- 6) ☒ Claim(s) 78-89 and 91-119 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Objections

Claims 45-100 are objected to because of the following informalities: there is no clear antecedent basis for "the generator". The independent claims recite "a generator", "an oscillatory air flow generator" and "a continuous air flow generator". Later the claims recite "the generator". It is not clear which of these three generators "the generator" is referring to. Appropriate correction is required.

Claim Rejections - 35 USC § 103

Claims 78-89, 91-119 are rejected under 35 U.S.C. 103(a) as being unpatentable over Norton et al. in view of Hayek and McGrath 3,896,794. Norton teaches a generator figure 13 comprising an oscillatory air flow generator comprising an air chamber 10, a reciprocating piston 75 and first motor 76. A continuous air flow generator 79 is operably connected with the oscillatory air flow generator. Norton teaches a frequency-compensation feedback system, 83, 82. Norton appears silent with regard to whether the reciprocating piston 75 includes a diaphragm such is an obvious equivalent alternative. Hayek teaches the convention of the piston including a diaphragm in column 5 lines 12-16 "[s]aid piston member may be a flexible diaphragm secured around an edge region thereof to close a pump chamber and having a central region which is reciprocable to pump air to and from pump chamber". Norton also appears silent whether or not the pressurized source 79 is a continuous air flow generator. Such is usually the case. The system requires a continuous source of pressurized air for the oscillatory air flow generator to create pressure pulses. McGrath teaches an oscillatory air flow generator 12 and "the source 2 applies a continuous stream of gas under pressure to device 12" column 3, lines 9-10. It would have been obvious to one of ordinary skill in the art to modify Norton to use a

diaphragm pump instead of the piston pump as taught by Hayek as an obvious equivalent type of piston pump and to use a continuous air flow generator as taught by McGrath for the specific type of source of air flow.

Claims 1-12 remain patentable. Claims 14-77 and 90 are allowable.

Response to Arguments

Applicant's arguments with respect to claims 78-89 and 91-119 have been considered but are moot in view of the new ground(s) of rejection.

Applicant argues that the prior art doesn't teach the pressure-compensation feedback system to maintain a positive pressure at a predetermined value. It is not clear how much weight can be given these arguments since the claims rejected above do not require such limitation. These claims merely recite a generator maintains the positive pressure at a predetermined value. All of the prior art devices do that. All of the prior art that teaches a separate generator providing a positive air pressure source maintains the pressure at a positive predetermined value. This predetermined pressure value is irrespective of the repeated inhalation and expiration of the person. There is no sensor that detects the inhalation and expiration of the person and adjusts the air pressure accordingly.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

While there is concurrent litigation related to this reissue application, action in this reissue application will NOT be stayed because there appears to be no significant overlapping issues between the application and that litigation. Due to the related litigation status of this


Art Unit: 3764

reissue application, EXTENSIONS OF TIME UNDER THE PROVISIONS OF 37 CFR 1.136(a)

WILL NOT BE PERMITTED.

ddd

9 February, 2004

 (703) 308-3713

Fax: (703) 872-9306

danton.demille@uspto.gov



Danton DeMille

Primary Examiner

Art Unit 3764